



[6450-01-P]

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Wind and Water Power Program: Guidance for Hydroelectric Incentive Payments

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of availability of draft guidance.

SUMMARY: The U.S. Department of Energy (DOE) invites public comment on a second version of its draft *Guidance for EPCA 2005 Section 242 Program*. The guidance describes how DOE intends to provide incentive payments to the owners or operators of qualified hydroelectric facilities for electric energy generated and sold for a specified 10-year period as authorized under section 242 of the Energy Policy Act of 2005.

DATES: Comments regarding this draft guidance must be received on or before ***[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]***.

ADDRESSES: Written comments may be sent to the Office of Energy Efficiency and Renewable Energy (EE-4), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-0121, or by e-mail at hydroincentive@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Mr. Steven Lindenberg, Office of Energy Efficiency and Renewable Energy (EE-4), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-0121, (202) 586-2783, hydroincentive@ee.doe.gov.

SUPPLEMENTARY INFORMATION: In the Energy Policy Act of 2005 (EPAc 2005; Public Law 109-58) Congress established a new program to support the expansion of hydropower energy development at existing dams and impoundments through an incentive payment procedure. Under section 242 of EPAc 2005, the Secretary of Energy is directed to provide incentive payments to the owner or operator of qualified hydroelectric facilities for electric energy generated and sold by a qualified hydroelectric facility for a specified 10-year period. (See 42 U.S.C. 15881) DOE has not made these incentive payments in the past due to a lack of appropriations for the hydroelectric production incentive. The conference report to the Fiscal Year 2014 Omnibus Appropriations bill, however, includes \$3,600,000 for conventional hydropower under section 242 of EPAc 2005.

In response, DOE developed draft guidance intended to describe the application process and the information necessary for DOE to make a determination of eligibility under section 242. On July 2, 2014, DOE issued draft guidance for public comment. See 79 FR 37733 and <http://energy.gov/eere/water/water-power-program>. A summary of the comments and the DOE response is available at: <http://energy.gov/eere/water/water-power-program>. Based on the comments received and a re-examination of the statutory

intent of the program, DOE is proposing the following changes to the draft guidance and is accepting additional public comment:

- The definition of “existing dam or conduit” is amended to specify that generator penstocks associated with a new generator and a temporary increase in dam height that does not expand reservoir topographic area and is for purposes of flood control, hydroelectric generation efficiency improvement, and/or health and safety improvements would not eliminate facilities from eligibility.
- “Qualified hydroelectric facility” is redefined to recognize both conventional and new innovative technologies and that construction should not require any permanent enlargement of impoundment or diversion structure when installed.
- A definition for “qualified kilowatt-hours” is added.
- The definition of “sale” of electricity is amended to specify that not-for-profit electric cooperatives and municipal utilities are considered unrelated to their members for purposes of hydroelectric production incentive payments.
- Definitions in the guidance are appealable.
- The net electric energy generated and sold must either be metered or must be measured through an alternative means confirmed by a third party.
- A definition for “first eligible for payment” is added and defined as the first Federal fiscal year that a qualified hydroelectric facility operates to sell electric energy and this change is repeated in other relevant portions of the guidance.

After receiving public comment asking for clarification about the date that hydropower facility owners or operators are first eligible for incentive payments, DOE reexamined the July draft guidance proposal that the 10-year eligibility period was to begin the first fiscal year in which the application for payment is made. The July draft guidance defined the period of eligibility to be “the fiscal year in which application for payment for electricity generated by the facility is first made and the facility is determined by DOE to be eligible for and receives an incentive payment.” See <http://energy.gov/eere/water/water-power-program>. DOE recognizes that the purpose of

the section 242 program is to incentivize new hydropower development and production. The statute envisioned 10 years of consecutive payments to stimulate such investment. Moreover, the incentive period mentioned in section 242(a) refers to the period of 10 fiscal years that begins with the fiscal year in which the electric energy generated from the facility is first eligible for such payments. Hydroelectric facilities are first eligible for such payments the date these facilities meet the “qualified hydroelectric facility” definition in section 242(b)(1), regardless of whether funds were appropriated in a given fiscal year. Congress only authorized appropriations for fiscal years 2006 through 2015, though it did not actually provide funding prior to fiscal year 2014, and limited the pool of qualified hydroelectric facilities to those that begin operation between fiscal years 2006 through 2015. DOE is now proposing that the 10-year period of eligibility begins the date a qualified hydroelectric facility begins operation and generates energy for sale (must be between fiscal year 2006 and fiscal year 2015) and ends 10 fiscal years from that date. (See 42 U.S.C. 15881(a)-(d)) DOE is accepting comments on this and all other aspects of the draft guidance.

Issued in Washington, DC, on October 14, 2014.

David Danielson,
Assistant Secretary,
Energy Efficiency and Renewable Energy.

[FR Doc. 2014-24919 Filed 10/17/2014 at 8:45 am; Publication Date: 10/20/2014]